FILED
6-13-16
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U 210 W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.	Application 12-04-019 (Filed April 23, 2012)

PUBLIC TRUST ALLIANCE PHASE 2 REPLY BRIEF

Michael Warburton, Executive Director
Public Trust Alliance,
a project of the Resource Renewal Institute
187 E. Blithedale Ave.
Mill Valley, CA 94941
Michael@rri.org

Patricia Nelson, CSBN 133643,
Attorney for the Public Trust Alliance,
130 Edward Ave.
San Rafael, CA 94903
415-497-1147
nelsonp34@hotmail.com

TABLE OF AUTHORITIES

Secondary Authorities

TABLE OF CONTENTS

SUMMARY OF FURTHER RECOMMENDATIONS

1. The Commission should approve Water Purchase Agreement ("WPA").
2. The Commission should consider the burden of proof/degree of scrutiny applicable when there is a history of failure of projects similar to the project proposed.
3. The Commission should consider "used and useful" principles re Cal-Am water facilities and their applicable ratemaking and design implications. These should be considered in the context of possible abandonment of the desal portion of the MPWSP.
4. The Commission should carefully consider whether desalination is the optimum or reasonable method of securing an additional source of water for Monterey County and Cal-Am ratepayers, in view of changed circumstances and potentially superior sources such as recycled water and/or water potentially available as a result of the passage of the Sustainable Groundwater Management Act.

I. Introduction

The Public Trust Alliance ("PTA") submits this Phase 2 Reply Brief pursuant to Rule 13.11 of the CPUC Rules of Practice and Procedure, the April 25, 2016, Ruling Conditionally Granting Joint Motion for A Separate Phase 2 Decision and Setting Hearing, and the briefing schedule set by the Administrative Law Judges on the final day of hearings. Perhaps enough has been said in the various Opening Briefs about the constructive efforts and reasonable progress of the Groundwater Replenishment ("GWR") project. Therefore, our Reply Brief will focus on certain statements made in the Opening Briefs about the underlying water supply issue, Cal-Am facilities, and the admissibility of Exhibit CA-47.

I. Recent History Indicative of a Disquieting Pattern

The Opening Brief of California American Water Company ("Cal-Am") and the other Joint Parties emphasizes urgency. Cal-Am states that its application addresses its need to obtain alternative sources of water in the Monterey Peninsula in light of the impending deadline in the 2009 Cease and Desist Order ("CDO") issued by the State Water Resources Control Board ("SWRCB" or "Board"). The CDO currently requires that Cal Am eliminate all non-permitted diversions for the Carmel River by no later than December 31, 2016. Cal-Am also states, as an example of constructive action on behalf of ratepayers, a request for a five-year extension of the CDO deadline, recently submitted to the SWRCB by Cal Am, the District, the Agency and others. Joint Parties Opening Brief, p. v.

The Joint Parties Opening Brief fails to note anywhere the role that Cal-Am played in creating the urgency that it cites as justification. The current emergency derives in significant part from Cal-Am's withdrawal from a prior, approved desalination project in which the desalination facility would have been owned by public agencies rather than itself.

In 2004, Cal-Am filed Application A.04-09-019 seeking a Certificate of Public Convenience and Necessity from the CPUC for the Coastal Water Project ("CWP"), which was intended to replace illegal diversions from the Carmel River constrained by the SWRCB CDOs. The CWP involved the production of desalinated water supplies, increased yield from the Seaside Groundwater Basin ASR system, and additional storage and conveyance systems to move the replacement supplies to the existing Cal-Am distribution system.

One of the alternatives in the Draft Environmental Impact Report for the CWP was championed by the Division of Ratepayer Advocates and earned the approval of large segments of the Monterey community. In Decision D.10-12-016, the CPUC approved implementation of the Regional Project alternative.

The Commission based its approval in substantial part on the inclusive politics and community consensus underlying the Regional Project: "We do not make this decision lightly but only after extensive review of the information supplied by the parties over many months, extensive discussion, and a thorough analysis of the agreements, the circumstances surrounding those agreements, vigorous public vetting, a review of the applicable law, and an assessment of the political and economic situation surrounding this application, we recognize the pressing need for the Regional Project, as well as the historic alignment of the goals of virtually all parties and the residents and businesses on the Monterey Peninsula to ensure that a secure supply of water is available before severe water restrictions imposed by the State Water Resource Control Board's Cease and Desist Order are fully implemented in 2016. In sum, we approved Cal-Am's participation in the Regional Desalination Project in recognition that time was of the essence to ensure that the ratepayers on the Monterey Peninsula would be supplied with adequate sources of

potable water well before the onset of the provisions of the Cease and Desist Order." 2012 Cal. PUC LEXIS 300, *9 - *10.

On October 14, 2011, Cal-Am filed a Petition for Clarification and Modification of D.10-12-016, stating that because certain impediments had occurred, it was possible that the Regional Desalination Project could be delayed or replaced with a different project, one in which the desalination infrastructure would be owned by Cal-Am. While the Commission characterized as "unfortunate" Cal-Am's withdrawal of support for the Regional Desalination Project, it saw no alternative but to move forward with the new application, A.12-04-019, seeking approval of the Monterey Peninsula Water Supply Project. 2012 Cal. PUC LEXIS 300, *27.

As a result of various delays associated with the MPWSP, time is again of the essence. Cal-Am can legitimately cite (largely self-imposed) urgency, but it has not (and cannot) cite broad-based community/ratepayer support or trust for its desalination project. Rather, there is a parade of assumptions deriving from the legal process, in which the GWR proceedings presuppose that the desalination infrastructure will be built. Several of these assumptions are unfounded, and perhaps worse, they have obliterated a hard-won political consensus.

II. California American Water Facilities

The Public Trust Alliance concurs with and supports the basic reasoning of ORA regarding the benefits of waiting for greater certainty:

- Waiting for greater certainty on the proposed desalination plant before authorizing construction of the Monterey Pipeline provides the following benefits:
- Allows Cal Am to determine the appropriate design details of the Monterey Pipeline, based on results of EIR alternatives analysis.
- Allows Cal Am to assess the changed system hydraulics associated with adding GWR to the system, and fully assess the capacity of the existing system for GWR water and ASR under those new conditions.

- Allows the Commission the opportunity to consider the Monterey Pipeline in conjunction with the desalination plant, which this facility is designed to support.
- Minimizes ratepayer risk and the potential for stranded costs from independent pre-approval of facilities designed to support a desalination plant prior to the final EIR.

ORA Opening Brief, pp. 17-18.

As ORA notes, Cal-Am has requested Commission authorization to construct the Monterey Pipeline and Monterey Pump Station prior to a final determination regarding MPWSP. ORA asserts that "The Commission should not authorize the expedited construction of these facilities at this time because: (1) Cal Am's existing infrastructure can accommodate extraction of GWR water, and the injection and extraction of aquifer storage and recovery ("ASR") Project water, (2) Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and overall components of the MPWSP and (3) the final design of the MPWSP and the design details of the facilities necessary to support that project are uncertain, pending the completion of a final EIR. The prudent approach would be for Cal Am to wait to construct the Monterey Pipeline and Pump Station until more certainty exists regarding the design of the desalination plant." ORA Opening Brief, pp. 10-11.

A. Burden of Proof

Cal-Am bears the burden of ***demonstrating convincingly*** that its proffered justification for expensive capital projects is a sound planning approach for the Monterey System. 2009 Cal. PUC LEXIS 346 at *20 (emphasis added). A sound planning methodology would use a risk based approach. Under a risk based approach the Commission would require utility planners to identify and assess risks and vulnerabilities, develop mitigation plans from various alternatives, and assemble tests and metrics for evaluating their plans. The utility should consider alternatives

and justify the alternatives chosen with respect to efficacy, cost, and other significant considerations. 2015 Cal. PUC LEXIS 366, *47. "[S]uccessfully integrating conservation into facilities planning can reduce or postpone capital facilities, reduce operating costs, and improve efficiency. 2009 Cal. PUC LEXIS 346, *32-33.

Cost appears to many to be a factor relevant to the burden of proof. According to ORA, "A facility that will cost nearly $50 million requires a high level of evidence that it is independently necessary given the considerable rate impact it will have on ratepayers, and the potential risk for an underutilized stranded investment." ORA Opening Brief, p. 14, item b).

While the Commission has declined to adopt a heightened "clear and convincing" standard of proof for capital projects, at least in the GRC context (2011 Cal. PUC LEXIS 275, *104 - *105), it appears to adopt some degree of heightened scrutiny when a utility has a history of saddling ratepayers with costs of expensive projects that were subsequently abandoned. See, e.g., 2011 Cal. PUC LEXIS 275, *72 - *73, citing D.92497, in which the Commission expressed its "concern" regarding "the increasing magnitude of abandoned project costs and the frequency of abandonments, the cost of which we are routinely being asked to place on the ratepayers' shoulders. We are also concerned with the increasing burden being placed on the stockholders who in the past have invested in utility stocks as a reliable income stock with some growth possibilities and with very little risk. . . . We cannot emphasize too strongly the necessity of examining each case on an individual basis to arrive at an equitable decision."

Policymakers have expressed the same concern. "Shifting the costs of bad bets and stupid bets is akin to stealing," said Loretta Lynch, an outspoken former president of the California Public Utilities Commission. Putting the risk on consumers, she said, "has allowed the utilities to spend like drunken sailors." Ivan Penn, *From useful to wasteful: How utility ratepayers have*

borne the brunt of failed projects, L.A. TIMES (June 5, 2016) (re electric utilities), http://www.latimes.com/business/la-fi-aliso-canyon-20160605-snap-story.html?utm_source=Sailthru&utm_medium=email&utm_campaign=Newsletter%20Weekly%20Roundup:%20Utility%20Dive%2006-11-2016&utm_term=Utility%20Dive%20Weekender (last visited June 11, 2016).

The public perception is similar, particularly among long-suffering Monterey ratepayers. According to activist George Riley, "Cal Am ratepayers have paid the full bill for stranded costs from prior Cal Am failures—totaling about $32 million so far, and with another $20 million on the line in legal proceedings ($15 million to $18 million is at stake in litigation with Marina Coast Water District and $3.4 million is at stake in litigation with Monterey County. Ratepayers will be outraged if another failure leads to more stranded costs on our bills. So far the bill for slant wells is probably under $10 million." See *George Riley Explains How Slant Wells Tie in to Cal Am's Growth Strategy*, MONTEREY BAY PARTISAN (Aug. 31, 2014), http://www.montereybaypartisan.com/tag/california-public-utilities-commission/page/2/.

See also, 2012 Cal. PUC LEXIS 300, *28 - *29, itemizing costs as of January 2012: "Thus far, $26,568,651 has been approved for recovery in pre-construction costs related to the Coastal Water Project. In A.11-06-030, Cal-Am is requesting approval of an additional $5,354,229 in pre-construction costs accrued in 2010. Cal-Am is also tracking post 2010 costs which totaled $687,167 as of January 31, 2012. These are not trivial amounts. *Cal-Am* has recovered $14,426,284 from its customers through its approved Special Request I surcharge." See, further, the discussion of the abandoned Regional Project, in Section II, above. Cal-Am should be held to a high standard indeed to avoid a repetition of this scenario.

Careful, skeptical scrutiny is essential because Cal-Am's Monterey ratepayers have been paying for years for costs of failed desal projects that were promoted as the solution to the looming restrictions of the SWRCB's cease and desist orders. Ratepayers have paid and paid and paid—and have yet to receive any tangible benefits from desal proposals that seem to grow ever more expensive.

In addition to carrying its burden of proof regarding prudent planning, a project proponent has the burden of proving that each project is used and useful, needed, and constructed at a reasonable cost. 2009 Cal. PUC LEXIS 299, *40. For a project to be used and useful, it must be built to meet design parameters. Id. As ORA correctly points out, future determinations on the MPWSP may affect the final design of the Monterey Pipeline. It strains credulity to suppose that the "requirements" for the Monterey pipeline would remain exactly the same, regardless of what happens with the overall water supply project.

As we pointed out in our Opening Brief, there are also changed circumstances, including climate change and increased emphasis on potentially superior sources such as further development of recycled water sources, that may affect the size, design, or indeed the ultimate need for the desal project. PTA Opening Brief, pp. 13 - 23. There are basically two choices: 1) postpone construction that may prove to be less than optimum in view of changes in the project or changed external circumstances or 2) forge ahead without fully accounting for these possibilities and then seek recovery from the consumer if things don't work out.

We favor the first alternative, which minimizes the chance of project abandonment or ill-suited infrastructure. There is far too much that must be done (and quickly) in community adaptation to climate change (especially in coastal areas) to waste public time and resources. Yet another failed desal project would be a particularly egregious waste, in part because such

projects promote narrow private interests to a greater extent than broad public interests. Community Groundwater Organizations are being formed, with the Salinas Basin is on the list, and the 2014 Sustainable Groundwater Management Act presents opportunities for regional cooperation. See PTA Opening Brief, p. 20, and 2014 GROUNDWATER LEGISLATION (January 21, 2016), pp. 17-21, https://www.co.monterey.ca.us/cao/igla/pdf/01-21-16_2014-CALIFORNIA-GROUNDWATER-LEGISLATION.pdf. There are likely to be further possibilities for sharing known public supplies of water in addition to recycling water. That preference appears most consistent with case law as well. To establish that its infrastructure was used and useful, a utility must "demonstrate that the project which it ultimately abandoned was reasonable throughout the project's duration in light both of the relevant uncertainties that then existed and of the alternatives for meeting the service needs of its customers." 1984 Cal. PUC LEXIS 1013, *75-76, 16 CPUC2d 205, citing D.92497. We think that the Commission should look carefully now at relevant aspects of climate change, developments in groundwater law and technology, and all of the concerns raised by ORA.

B. Information on Need for Monterey Pipeline and Pump Station for GWR Project

ORA states Cal-Am did not provide enough detailed information on its existing system to enable ORA to perform a complete analysis as to whether Cal-Am's existing infrastructure can already accommodate extraction of GWR water, and the injection and extraction of ASR Project water. ORA Opening Brief, p. 11.

In contrast, Cal-Am asserts that ORA disregards or fails to address important information in the record. Cal-Am relies heavily on the GWR FEIR. Joint Parties Opening Brief, p. 34. The Joint Parties describe the infrastructure as follows: "The Monterey pump station would be connected to and work in tandem with the Monterey pipeline. Cal Am proposes to use the

Monterey pipeline to eliminate the existing system constraint (i.e., the hydraulic trough) by providing a large, dedicated transmission main to move water supply efficiently across the system from the Carmel Valley to the Monterey pump station, where the water will be boosted to the appropriate pressure for delivery to the ASR Project wells for injection. Thus, in combination, the Monterey pipeline and pump station would enable the ASR Project to achieve the full yield authorized by the water rights for the ASR Project. As such, there is a need for both the Monterey pipeline and pump station independent of the MPWSP desalination plant, and thus would serve important functions on the Cal Am system regardless of the Commission's decision on the MPWSP desalination." Joint Parties Opening Brief, pp. 38-39.

The Joint Parties cite the FEIR, which states:

> Because the CalAm system was initially built to deliver water from Carmel Valley to the Monterey Peninsula cities, a hydraulic trough currently exists in the CalAm peninsula distribution system that prevents water delivery at adequate quantities from the Seaside Groundwater Basin to most of Monterey, and all of Pacific Grove, Pebble Beach, Carmel Valley, and the City of Carmel areas. The hydraulic trough is an area of the CalAm distribution system with very small pipe diameters and very low elevation such that the required high flow rates of water and high pressures needed to convey water from the north between two pressure zones of the system cannot be achieved with the current infrastructure. This system deficiency would need to be addressed regardless of whether the Proposed Project is implemented by itself, CalAm's Monterey Peninsula Water Supply Project with the full-size desalination plant is implemented without the GWR Project, or the variant to the Monterey Peninsula Water Supply Project that includes both a smaller desalination plant and the GWR Project is implemented.

Pure Water Monterey Final Environmental Impact Report, pp. 2-30 – 2-31, http://purewatermonterey.org/wp/wp-content/uploads/Volume-I-Consolidated-Final-EIR-Jan-2016.pdf. CalAm is proposing to construct two new pipelines--the Transfer and Monterey pipelines--to bridge this trough. Id. 2-81. There is existing infrastructure for extraction and

injection, which is limited-capacity or one-way. Joint Parties Attachment to Opening Brief, JE-4 – JE-8.

Cal-Am also implies that proceedings relating to the Regional Project somehow establish the utility and reasonableness of the proposed Cal-Am infrastructure: "The CAW-Only Facilities were already approved by the Commission in connection with a previously approved application for a prior proposed project." Large Settlement Agreement, pp. 16 – 17.

The case in question, 2012 Cal. PUC LEXIS 300, addressed Cal-Am's decision to withdraw from the Regional Project and to request approval of a different project, the MPWSP, in A.12-04-019. Cal-Am asked the Commission to confirm that the Cal-Am only facilities could still be built and that the costs could still be recovered, regardless of the ultimate outcome of the Regional Desalination Project. Cal-Am contended that, with the exception of the transfer pipeline, the facilities approved in D.10-12-016 that were to be built by Cal-Am would still be necessary and should be designated as used and useful for ratemaking purposes. 2012 Cal. PUC LEXIS 300, *5.

However, the Commission's Conclusions of Law in the case that permitted Cal-Am to withdraw from the Regional Project did not constitute a transfer of the "approval" of Cal-Am only infrastructure to the substitute project. The Commission stated: "It would not be reasonable to approve Cal-Am's Petition to Modify D.10-12-016 without fully determining how the Cal-Am facilities would relate to the project ultimately determined to replace the Regional Desalination Project; therefore, it is reasonable to accept Cal-Am's April 23, 2012 withdrawal of that petition." 2012 Cal. PUC LEXIS 300, *35. Further, the Regional Project and its associated infrastructure were to be implemented pursuant to a settlement agreement, which does not constitute precedent in any case.

ORA also describes the Cal-Am facilities, with a greater degree of quantification and reference to their specific functions.

> However, available information indicates that there is additional available capacity in the Cal Am system for extraction of GWR and ASR water, as well as for the diversion of excess Carmel River water. Cal Am currently utilizes the ASR system to divert excess flows from the Carmel River and inject these flows into the Seaside Groundwater Basin ("Seaside Basin") via four existing ASR wells. Cal Am then extracts water from the Seaside Basin via the ASR wells at a later time to distribute to customers. Cal Am's proposed future water system will utilize six ASR wells (four existing, two proposed) for the following purposes: injection and extraction of ASR Project water; injection and extraction of desalination plant water; and extraction of GWR Project water.
>
> To utilize water from the GWR Project, Cal Am would extract water from the Seaside Basin via the existing ASR wells. Cal Am's existing infrastructure has the ability to pump water from the Seaside Basin to the Cal Am system via the ASR wells, and has been doing so for a number of years. This existing system has the additional capacity available to utilize GWR water. During a three month period from October 2011 to January 2012, 1,117 acre feet of ASR water was recovered from the Seaside Basin and pumped into the Cal Am distribution system. Since January 2012, two additional ASR wells (ASR-3 and ASR-4) became operational, more than doubling the total extraction capacity of the ASR wells.
>
> Despite this doubling of extraction capacity, the total capacity of Cal Am's existing infrastructure for withdrawals is not necessarily determined by the extraction capacity of the wells, as there could be other constraints on the system. Cal Am estimates that ASR-3 and ASR-4 added 1,000 acre feet per year to the system's withdrawal capacity, or 250 acre feet per quarter. This brings the withdrawal capacity of Cal Am's existing infrastructure to a minimum of 1,367 acre feet per quarter.
>
> The GWR project is designed to provide Cal Am with 3,500 acre feet per year of water. Cal Am's projections for its future water supply include an estimated 1,300 acrefeet per year of water from the ASR system (excess water previously diverted from the Carmel River and injected into the Seaside Basin). Therefore, the total amount of water projected by Cal Am for extraction from the ASR wells with the GWR project on-line is 4,800 acre feet year. If distributed equally across the four quarters, this results in withdrawals of 1,200 acre feet per quarter – slightly more than the 1,117 acre feet per quarter demonstrated capacity of Cal Am's existing infrastructure *without* the increased capacity associated with existing wells ASR-3 and ASR-4. It is also less than the projected minimum 1,367 acre feet per quarter withdrawal capacity of existing infrastructure when existing wells ASR-3 and ASR-4 are considered.

See ORA Opening Brief, pp. 11-13 (emphasis in original). On balance, we find ORA's argument somewhat more persuasive, in part because of its careful quantification. Also significant to us is the fact that it does not rely on an assumption that the configuration of the proposed infrastructure will necessarily remain the same even if the GWR facilities are constructed without the desal facility. The possibility of a stand-alone GWR facility is mentioned as a possibility in the FEIR, at p. 2-81.

C. "Used and Useful" Requirements

Project proponents propose the following treatment of Cal-Am facilities as used and useful:

> Pursuant to the Large Settlement Agreement (as well as traditional ratemaking), the Cal Am-only facilities, in totality, were to be put into service as they became used and useful. The same should be done for the Monterey pipeline and pump station, with the modification noted below. Once construction is complete, the Monterey pipeline and pump station will be used and useful in conjunction with the existing ASR Project facilities, as support for the existing Cal Am system, and to take advantage of water produced by the GWR Project. According to the Large Settlement, once the Cal Am-only facilities are used and useful, they should be put into rates via a Tier 2 advice letter filing. This same process should be used for the Monterey pipeline and pump station.

Joint Parties Opening Brief, pp. 40-41.

Over the years, the Commission in its traditional ratemaking has closely adhered to the "used and useful" principle, which requires that utility property be actually in use and providing service in order to be included in the utility's ratebase. 1984 Cal. PUC LEXIS 1013, *71-74, 16 CPUC 2d 205, 228-229. See D. 85-08-046, 1985 Cal. PUC LEXIS 687, *2, 18 CPUC2d 592, 599; *accord* D. 13-05-010 ("plant that is not used and useful is normally excluded from rate base"); D. 05-02-024, Ordering Paragraph 8 (July 21, 2005) (allowing water utility to include

capital expenditures in rate base "once the plant additions have been completed and are being used and useful").

The Commission has generally described the "used and useful" standard as limiting rate base treatment to projects which "provide direct and ongoing benefits" to ratepayers or are "actually in use and providing service" to ratepayers. D. 84-09-089; *accord* D. 13-04-014 (Apr. 4, 2013); D. 09-06-027 (June 18, 2009).

1. Design Implications

For a project to be used and useful, it must be in use providing service to ratepayers. In addition, it must be built to meet the design parameters. Thus, if a project is supposed to perform at a certain level, but performs at a lower level because of inadequate design or construction, only those costs reasonably attributable to the lower performance level will be allowed in ratebase. 2009 Cal. PUC LEXIS 299, *40.

There is a reasonable prospect that the currently proposed design for the Monterey Pipeline and Pump Station might not be adequate by the time that the desalination project is approved, if indeed it is approved. ORA makes the following argument in its Opening Brief, which we find persuasive: "The Commission has yet to issue a Draft EIR for the MPWSP, and the current project schedule estimates that the Final EIR will not be available until late 2017. The Draft EIR will analyze project alternatives, which will include variations on the proposed design of the desalination plant and related facilities. Since the CPCN process will take the EIR results into consideration, the exact details of what the Commission will authorize with regard to MPWSP are uncertain. Details such as the size, location, and other aspects of the desalination plant and associated facilities impact the appropriate design of the supporting facilities.

Therefore, at this time, the appropriate design details of these supporting facilities, including the Monterey Pump Station, remain uncertain.

"Although Cal Am asserts that the Monterey Pump Station has independent necessity, it was a facility initially proposed as part of a larger project and is still a vital facility for the use of MPWSP water. Given the uncertainty regarding the final design of MPWSP, the prudent approach would be for Cal Am to wait to construct the Monterey Pump Station until more certainty exists regarding all the components of the MPWSP. This would be consistent with the Commission's approach with facilities initially proposed as part of the withdrawn Regional Desalination Project in proceeding A.04-09-019." ORA Opening Brief, p. 17.

2. Ratemaking Implications

The Commission has addressed this principle in the context of project abandonment, which we see as a distinct possibility given the history of desal projects in Monterey County. If the desal project is abandoned due to litigation, spiraling costs, public opposition or other factors, both ratepayers and shareholders would be significantly disadvantaged by the costs they would have. Regarding abandoned projects, the Commission has said

> We begin by analyzing these projects under used and useful principles, long followed by our Commission. Under these principles, ratepayers are required to bear only the reasonable costs of those projects which provide direct and ongoing benefits, or are used and useful in providing adequate and reasonable service, to the ratepayers. Those projects which never reach fruition by definition fail to be used and useful to the ratepayers. As a result the costs incurred in determining the feasibility of a given project which is later abandoned are borne by the shareholders.
>
> By requiring shareholders to absorb feasibility study costs, management has an economic incentive to select only those projects that are reasonably likely to

> succeed. Importantly, it is management alone that decided initially which projects to pursue and which projects to abandon.
>
> . . . .
>
> A review of the exceptional cases is presented in D.92497 dated December 5, 1980. In these abandoned project cases we allocated the direct feasibility costs to ratepayers and AFUDC costs to shareholders. The costs borne by ratepayers were then amortized over a period of years. We have allowed the utility to rate-base a portion of the unamortized costs only when the residual value or potential benefits were likely to accrue to ratepayers. Otherwise, we considered such treatment as an inappropriate shifting of risk to the ratepayers. (Pages 46-47.)

1984 Cal. PUC LEXIS 1013, *71-74, 16 CPUC2d 205, citing D.83-12-068 as modified by D.84-05-100, discussing conditions under which the Commission would grant rate relief for abandoned projects. This constitutes an exception to the "used and useful" principle for projects which are prudently pursued and abandoned during a period of great uncertainty. In that circumstance,

> The ratepayer does not become the utility's underwriter in a period of high risk. And the ratepayer's participation is limited to those abandoned projects, or those portions of projects, for which the utility demonstrates that it has exercised reasonable managerial skill. The utility bears the burden of proof of reasonableness with respect to the planning and conduct of a given project. A mere perception of generalized and ill-defined risk will not suffice to invoke this exception to the "used and useful" principles. "***The utility will have to demonstrate that the project which it ultimately abandoned was reasonable throughout the project's duration in light both of the relevant uncertainties that then existed and of the alternatives for meeting the service needs of its customers.***"

1984 Cal. PUC LEXIS 1013, *75-76, 16 CPUC2d 205, citing D.92497 (emphasis added).

III. Admissibility of Exhibit CA-47

Exhibit CA-47 is an "Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, Division of Ratepayer Advocates, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water

Management District, Monterey Regional Water Pollution Control Agency, and Planning and Conservation League Foundation on Pre-Construction Activities Related To Certain Pipeline Facilities" ("Agreement").

ORA objected to introduction of the Agreement pursuant to Rule 12.6. PTA objects to the way that Cal-Am attempted to use the document—to attempt to stifle and punish a genuine disagreement by a former ally. See MCWD Opening Brief, p. 20. Whether or not this conduct violates Rule 12.6 and the ethics of settlement discussions, it violates our understanding of good faith. ORA has a right to change its mind about the merits of the project in view of changing circumstances, new information, or further reflection.

The document itself is problematic because it is one more document, signed by DRA and a limited set of other parties, and unknown to others, like PTA, who wanted to protect public rights. Those rights should not be surrendered, or commandeered by the project proponent, via selective discussions.

Moreover, this is just one more document which presupposes that the desal project is going to be built no matter what. It is just one more step in a long line of slippery assumptions to "engineer the inevitability" of desal.

IV. Conclusion

PTA enthusiastically supports the GWR project and the increased use of recycled water in Monterey and elsewhere. Accordingly, we support the WPA and urge the Commission to approve it, with appropriate consideration of the issues raised in this brief and our Opening Brief.

Signed: June 12, 2016

_____/s/_____
Patricia Nelson, CSBN 133643,
Attorney for the Public Trust Alliance,

130 Edward Ave.
San Rafael, CA 94903
Telephone: 415-497-1147
nelsonp34@hotmail.com

_____/s/_____
Michael Warburton, Executive Director
Public Trust Alliance,
a project of the Resource Renewal Institute
187 E. Blithedale Ave.
Mill Valley, CA 94941
Michael@rri.org